



JOHN M. URBAN
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
COMMUNITY ANTENNA TELEVISION COMMISSION
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FCC - MAIL ROOM January 12, 1993

VIA FEDERAL EXPRESS

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Tier Buy-Through Prohibitions - Docket No. 92-262

Dear Ms. Searcy:

I have enclosed an original and ten (10) copies of the Comments of the Massachusetts Cable Television Commission for filing in connection with the captioned matter.

Please place me on the service list for this docket matter.

In addition, please mark one copy of these comments "filed" and return it to me in the envelope I have enclosed.

Please do not hesitate to contact me if you should have any questions in connection with this matter. In the meantime, I appreciate your assistance.

Sincerely,


John M. Urban
Commissioner

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
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JAN 13 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Implementation of Section 3
of the Cable Television Consumer
Protection and Competition Act
of 1992

Tier Buy-Through Prohibitions

MM Docket No. 92-262

FCC - MAIL ROOM

COMMENTS OF THE MASSACHUSETTS CABLE TELEVISION COMMISSION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

I. Introduction

The Massachusetts Cable Television Commission (the "Massachusetts Commission") is the state agency charged with regulating the cable television industry in Massachusetts pursuant to Massachusetts General Law Chapter 166A. The Massachusetts Commission's responsibilities include representing the interests of the citizens of the Commonwealth of Massachusetts before the Federal Communications Commission (the "FCC"). M.G.L. Ch. 166A, §16 (1990). Therefore, the Massachusetts Commission has a direct interest in the outcome of this proceeding.

The Massachusetts Commission will not comment on the question of current technological limitations or on the applicability of a 10-year exception to the buy-through provision as requested in the FCC's Notice of Proposed Rulemaking released December 11, 1992 (the "Notice"), but rather will limit its comments to the definition of "discrimination between subscribers", the waiver of the buy-through provisions, and the effect of the waiver provisions on newly constructed cable systems.

II. Discrimination Between Subscribers

The FCC has asked for comments on its interpretation of the buy-through provisions of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act" or the "Act"). Notice, Paragraph 7. The Massachusetts Commission agrees with the FCC's interpretation that the Act requires all cable subscribers to be, at a minimum, basic service cable subscribers. As such, they are allowed to purchase premium or pay-per-view services that are offered on a per channel or per program basis without purchasing an interim tier of service. Pub. L. No. 102-385, §3(b)(8)(A)(1992). In addition, the Massachusetts Commission believes that the 1992 Act requires all subscribers who wish to receive any other service to subscribe to the basic level of service. Pub. L. No. 102-385, §3(b)(7)(A)(1992).

The Massachusetts Commission concurs with the FCC's conclusion that "basic tier subscribers who do 'buy through' are entitled to the same rate structure for those premium or pay-per-view services as subscribers purchasing intermediate services or tiers." Notice, Paragraph 7.¹ We believe that there is the possibility that a la carte premium services may either (1) be offered to all subscribers at one rate and, simultaneously, packaged at a discounted rate offered only to intermediate tier subscribers or (2) only packaged at a discounted rate and offered only to intermediate tier subscribers. The Massachusetts Commission is concerned that operators may create new service packages in an attempt to evade

¹ We have used the term "buy-through" throughout our comments as it is used in this quote from the Notice.

the purpose and intent of the 1992 Act's buy-through provisions. We believe that incentives exist which may drive an operator toward evasion.

Incentives, not based on cost or pricing economics, may exist that could artificially alter the cost of a la carte services that would be subject to the buy-through. For example, if a large number of subscribers opt to buy-through to a la carte services the resulting reduction in intermediate tier(s) subscribers will negatively effect the cable industry's ability to offer local insertion advertising on these intermediate tiers. A loss in local insertion advertising revenue would have an effect on the systems' cost structure and thus, arguably, an effect on the charges for a la carte services. While this shift and the resulting rate increase for a la carte services may be justifiable, we are concerned that there may be an incentive to negate this shift by creating a pre-emptive pricing scheme, unrelated to cost, that is designed to evade the buy-through provisions. Similarly, we feel that the industry's heavy incidence of vertical integration between programmers and cable operators may provide incentives for ensuring interim tier subscriptions by eliminating, minimizing or "ostracizing" a la carte offerings.

Although we have concerns about these possible incentives for evasion, we are similarly concerned about attempts at creating additional, overly burdensome regulations in order to address their possible impact. Prior to passage of the 1992 Act, we experienced some interesting packaging schemes in Massachusetts. For example,

Cablevision Industries offers subscribers The Disney Channel, SportsChannel, Court TV and The SciFi Channel for \$5.95 per month. Nashoba Cable similarly packaged The Disney Channel, SportsChannel, Bravo, Court TV, The SciFi Channel and E! for \$4.95 per month. Framingham Cablevision has placed SportsChannel, The Disney Channel, The SciFi Channel and Bravo in a tier that costs \$4.95 per month. These packages were very well received. The Massachusetts Commission is concerned that restrictions on multiple or overlapping tiers may limit an operator's ability to create such innovative service packages that we believe are beneficial to subscribers. Therefore, we recommend a regulatory approach that allows for this type of packaging with the understanding that future, appropriate regulatory action would occur if evidence showed cases of abuse.

In a related footnote, the FCC asks "could a specific group of channels be offered at a price of \$5.00 for one channel, \$4.00 for any second channel, \$3.00 for any third channel, and so on." Notice, Footnote 7. We assume that under this scenario these same channels would be available to the basic subscriber at an a la carte rate of at least \$5.00 each. This type of pricing would result in a packaged price of \$12.00 for interim tier subscribers and an a la carte price of at least \$15.00 for basic subscribers. We find this pricing, on its face, to be discriminatory. We believe that if a basic subscriber utilizing the buy-through provisions could assemble an identical grouping of channels, it should not cost more than a package including those same channels

which is available to interim tier subscribers. The likely basis for a lower priced package of services would be the price breaks an operator would receive from its suppliers (programmers). It seems unlikely that an operator or a programmer would have any economic justification for offering a package of services to an intermediate tier subscriber at a cost which is less than the cost of the same services purchased by a basic subscriber on an a la carte basis.

In addition, the Massachusetts Commission believes that if an intermediate tier subscriber were able to purchase a single channel² for \$5.00, that same channel (or range of a la carte channels if the subscriber has a choice) would have to be available to the basic tier subscriber at the same price. Further, we note that any combination of channels represents a "cable programming service" as that term is defined in the Act and as such, it would be subject to the FCC's rate regulation.

In its final question on discrimination, the FCC seeks comment on whether or not "all subscribers on an addressable system must be provided with an addressable converter" Notice, Paragraph 8. The Massachusetts Commission believes that a cable operator should be considered to have an addressable system for purposes of the 1992 Act if the cable system has the ability to transmit addressable information over the system to all subscriber points, and either all subscribers have a converter box able to receive addressable information or the cable operator provides such a

² In other words, an interim tier subscriber would not be required to subscribe to more than one premium channel to receive the \$5.00 rate.

converter box to any subscriber who requests it.³ If an operator is unable to provide a converter box to each subscriber who requests one, not only is the system not addressable pursuant to this definition, but also the operator would be prohibited from offering buy-through services to any subscriber on the system. To allow otherwise would be to allow the operator to violate the uniform rate structure requirements of the Act. Pub. L. No. 102-385, §3(d) (1992).

III. Waiver of the Buy-Through Provision

The FCC has noted that the 1992 Act gives the FCC the authority to grant waivers of the buy-through prohibition to the extent consistent with the public interest in order to avoid an operator having to increase its rates as a result of the prohibition. Notice, Paragraph 9. The FCC seeks comment on whether or not there are "other circumstances in which a waiver would be necessary and appropriate" Notice, Paragraph 9. We feel the FCC should exercise extreme caution when defining waiver criteria and parameters. If the FCC intends to identify potential situations in which it would grant waivers of the buy-through provisions, we feel it would be appropriate at that time to invoke a separate rulemaking process that presents the proposed waiver rules for comment. This would allow interested parties to

³ This definition would prevent an operator from arguing that the 1992 Act requires the operator to provide all subscribers with an addressable converter box. In other words, if a subscriber does not desire to avail himself or herself of the buy-through options offered by the operator, he or she cannot be required to have an addressable converter box if this requirement is based solely on the provisions of the 1992 Act.

respond to the particular criteria in question. The Massachusetts Commission would be concerned if waiver criteria became part of the FCC's rules without any opportunity for comment by the public. For these reasons and because of the implications this provision will have on the rate regulation rulemaking released December 24, 1992, and vice versa, we feel strongly that the FCC should move slowly in this area.

IV. Newly Built Systems

The FCC has requested comment as to whether or not "new cable systems constructed during the 10-year period of the exception can or must be required to comply with the buy-through prohibition upon construction." Notice, Paragraph 9. We question the FCC's meaning of "new cable systems". If "new cable systems" means new construction that results from a renewal process, we would be of the opinion that the question is best addressed locally during renewal. In other words, the FCC should not impose regulations on operators who are rebuilding systems pursuant to locally negotiated franchise agreements. If "new cable systems" refers to systems built as a result of the issuance of a new franchise, that term would appear to apply to: 1) the remaining rural areas that do not have cable television service and 2) cable television overbuilders. The Massachusetts Commission feels that requiring operators of either of these types of "new cable systems" to comply with the buy-through provisions of the Act upon completion of construction would be inequitable and would put many communities which are not currently wired for cable service at a disadvantage.

There are still communities in Massachusetts which are not wired for cable. Most of these communities are rural in nature and many have tried without success to attract an operator to their areas. Requiring cable operators to meet more rigorous standards in these communities than they have to meet in other communities would put these communities at a further disadvantage in their quest to receive cable service. Further, holding an overbuilder to a standard which is higher than that to which an existing operator is held would be inequitable and might retard the 1992 Act's goal of increasing competition and choices for consumers in the cable television industry.

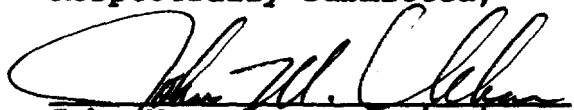
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In a closing note, we would like to briefly mention our concerns regarding a possible increase in signal scrambling as a result of the buy-through provision. Although we realize the matter of signal scrambling will be addressed elsewhere, the Massachusetts Commission feels that this is a significant issue that deserves the raising of a cautionary flag. This issue may well create considerable consumer outcry and, therefore, it is worth mentioning now. The buy-through provision may have the effect of forcing cable operators to scramble channels that are not presently scrambled. If this occurs, subscribers who have not needed a converter box in the past will now need a converter box to receive service. The FCC should consider the effect that this scrambling will have on the increased need for customer premises equipment (and, perhaps, a corresponding increase in a subscriber's

monthly bill should the operator charge the subscriber for the equipment) as well as the increase in occurrence of equipment compatibility problems caused by the converter box.

We appreciate the opportunity to comment on these matters of great importance to the cable industry and to cable subscribers and look forward to working to implement the regulations promulgated by the FCC.

Respectfully submitted,



John M. Urban, Commissioner

January 12, 1993